

FDICFederal Deposit Insurance Corporation
Washington, D.C. 20429*Robert Fick*

#54

Legal Division

FACSIMILE TRANSMITTAL SHEET

DATE 4/8/99 TIME 6:10pmTO: Roger Bezdek, Senior Advisor For Fiscal Management TreasuryLOCATION: Washington, D.C.TEL # 202/622-1807FAX # 202/622-0962FROM: Robert Fick, CounselTEL # (202)898-8962FAX # (202)898-3715NUMBER OF PAGES (INCLUDING COVER) 4

DELIVERY INSTRUCTIONS:

URGENT XNORMAL

REMARKS:

The FDIC submits, by FAX, the attached comment letter on Treasury's Advance Notice of Proposed Rulemaking on Possible Regulation Regarding Access to Accounts at Financial Institutions Through Payment Service Providers. We will also mail the original of this letter to you tomorrow April 9, 1999.

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Federal Deposit Insurance Corporation
Washington, D.C. 20429

April 8, 1999

Office of the Fiscal Assistant Secretary
U.S. Department of the Treasury
Room 2112
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Sir:

The FDIC submits these comments on the Advance Notice of Proposed Rulemaking issued by the Treasury Department's Fiscal Service with respect to the possible regulation of arrangements between certain financial institutions and payment service providers (the "ANPR"). 64 Fed. Reg. 1149 (January 8, 1999). Pursuant to such arrangements recipients of electronic federal benefit payments gain access to those payments through payment service providers such as check cashers, currency dealers and exchangers, and money transmitters. The ANPR seeks comment on whether the Treasury should prohibit such arrangements or regulate them. It also asks, if Treasury should regulate them, what should be the content of such regulations.

These arrangements were apparently developed in response to the Debt Collection Improvement Act of 1996 which generally requires that, after January 1, 1999, all "federal payments" be made by electronic funds transfer ("EFT '99").¹ 31 U.S.C. § 3332. In connection with EFT '99, the Treasury also recently sought comment on the features of the proposed Electronic Transfer Account ("ETA") which will be a special account available to every federal benefit payment recipient for receiving federal payments via electronic funds transfer. 63 Fed. Reg. 64820 (November 23, 1998). However, the arrangements that are the subject of the ANPR involve accounts that are not ETAs.

The FDIC recognizes the importance of the EFT '99 effort and the significant benefits that flow from this program. The FDIC shares the Treasury's concerns regarding arrangements between financial institutions and payment service providers that provide access to electronic federal benefit payments through payment service providers. While we do not believe that it is desirable to prohibit such arrangements, the FDIC believes that certain measures are necessary to minimize or avoid the potential for misunderstanding.

¹ We note that the FDIC continues to hold the legal view that the EFT requirement imposed by the DCIA does not apply to deposit insurance payouts made when an insured depository institution fails, because such payments do not fall within the statutory definition of "Federal payments." In addition, to require electronic funds transfer of deposit insurance payouts in a failed bank situation would be impractical and likely to result in unwarranted delay in the making of such payments.

In order to avoid misunderstandings regarding the existence of deposit insurance, it is recommended that any regulations issued regarding these arrangements clarify whether the term "account" means a deposit account that is covered by federal deposit insurance or some other type of account that is not insured by the FDIC. For example, a non-deposit investment account maintained in the trust department of an FDIC-insured depository institution is not insured, while every deposit account at the same institution is insured. Ambiguity in the meaning of the term "account" may cause confusion on the part of federal benefit recipients with regard to whether and when a federal benefit payment paid to an account is covered by federal deposit insurance.

Since many payment service providers are regulated, if at all, only on a State or local level, uniform federal guidance would seem to be appropriate to ensure that appropriate disclosures are made. The FDIC believes that clear and conspicuous disclosures can provide important protections for the federal benefit payment recipients who utilize these payment service providers.

First, disclosure should be made of the extent of federal deposit insurance, noting specifically the circumstances when the recipient's funds are insured and when they are not insured in the arrangement.² In this regard it is also important to note that the availability of deposit insurance depends on the nature of the arrangement between the financial institution and the payment service provider. For example, in those arrangements that involve the transfer of payments to a "pooled" account (*e.g.*, a custodial account, an agency account, or a trust account) owned by the payment service provider for the benefit of multiple customers, the individual interest of each federal benefit payment recipient may be insured up to the \$100,000 limit, provided that two conditions are met. First, the deposit account records must disclose the existence of the custodial relationship, and second, the payment service provider's business records must disclose the interests of the individual recipients in the account. Otherwise, deposit insurance coverage would cover only the payment service provider and then only up to the \$100,000 limit.

Second, payment service providers should disclose all fees and costs that are applicable, the legal nature of the relationship with the financial institution, and the specific remedies that the customer may utilize to resolve an error, a default by the payment service provider, or other problem with the arrangement.

Finally, disclosures currently required by existing law (for example, pursuant to Reg. E and Reg. DD) should, of course, be made to federal benefit recipients participating in these arrangements. The nature of the arrangement between the payment service provider and an insured depository institution will determine the particular consumer protections available to the federal benefit recipients. Absent such disclosure, federal benefit recipients may not be aware of such rights, and important safeguards may be overlooked.

² We note that the linkage between a depository institution and a payment service provider may increase the potential for misunderstanding. For example, some federal benefit recipients who access their funds through payment service providers may believe that the initial deposit of their payments into an account at an insured depository institution confers upon them deposit insurance coverage that continues after the payments are transferred out of that account.

The FDIC concurs that these arrangements should incorporate adequate disclosures regarding deposit insurance and other consumer protections to avoid misunderstanding. As indicated by the issuance of the attached Financial Institution Letter # 64-98, regarding arrangements with payment service providers, we welcome the opportunity to work with the Treasury to ensure that these arrangements enhance EFT '99.

The FDIC appreciates the opportunity to comment on this proposal. We would be happy to work with you on these issues. If you have any questions regarding our comments, please contact Robert C. Fick at 202-898-8962.

Sincerely,



William F. Kroener, III
General Counsel

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